

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN T. WILLIAMS,

Plaintiff,

-against-

UNITED STATES OF AMERICA, *et al.*,

Defendants.

19-CV-837 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff John T. Williams, a Georgia resident, paid the fee for this *pro se* action, alleging that Defendants violated his constitutional rights. Some of Plaintiff's allegations arise out of his criminal proceedings that were held in this District.¹ *See United States v. Williams*, No.14-CR-784-2 (RJS) (S.D.N.Y. Dec. 14, 2016), *aff'd*, 16-4186-cr (2d Cir. July 9, 2018). On May 30, 2019, Plaintiff filed a motion for the return of property under Federal Rule of Criminal Procedure 41(g) (ECF No. 13.)

Because Plaintiff's criminal action is closed, his motion for the return of property under [Fed. R. Crim. P. 41\(g\)](#) must be treated as a new civil action. *See Diaz v. United States*, 517 F.3d 608, 610 (2d Cir. 2008) ("A Rule 41(g) motion that is brought after the criminal proceeding is over is treated as [commencing] a civil equitable action."); *United States v. Giovanelli*, 998 F.2d 116, 118–19 (2d Cir. 1993) (holding that the district court where a defendant was tried has ancillary jurisdiction to decide a defendant's post-trial motion for the return of seized property).

Courts in this Circuit have held that when a Rule 41(g) motion is construed as commencing a new civil action in equity, the plaintiff must either pay the filing fees associated

¹ Plaintiff was incarcerated when he filed this action, but he has since been released.

with filing a new complaint or seek leave to proceed *in forma pauperis*. *See, e.g., United States v. Sash*, 581 F. Supp. 2d 647, 648-49 (S.D.N.Y. 2008); *Ruotolo v. United States*, Nos. 94-CV-5962, 87-CR-0813, 2006 WL 1652597, at *2-3 (E.D.N.Y. June 14, 2006).

CONCLUSION

The Clerk of Court is directed to open the motion for return of property as a new civil action, and docket the motion (ECF No. 13) and this order in the new case. The Court will issue a follow-up order directing Plaintiff to either pay the filing fee or seek leave to proceed *in forma pauperis*.

The Clerk of Court is also directed to mail a copy of this order to Plaintiff, and note service on the docket.

The Clerk of Court shall docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: June 14, 2019
New York, New York



COLLEEN McMAHON
Chief United States District Judge